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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DEC 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
Amendment of the Commission's Rules) WT Docket No. 97-82
Regarding Installment Payment)
Financing for Personal Communications)
Services ("PCS") Licensees)
Installment Payment Restructuring)

To: The Commission

COMMENTS ON PETITIONS FOR RECONSIDERATION

CONXUS Communications, Inc. ("CONXUS"), by its attorneys and pursuant to FCC Rule Section 1.429, submits its comments on the petitions for reconsideration filed with respect to the Commission's *Second Report and Order and Further Notice of Proposed Rule Making*, FCC 97-342 (October 16, 1997), 62 Fed. Reg. 55375 (October 24, 1997) ("*C Block Order*") in the above-referenced proceeding, and shows the following:

1. As CONXUS has previously explained, it is implementing a nationwide narrowband Personal Communications Service ("PCS") system on its five regional 50/50 KHz narrowband PCS channels which will provide the public advanced two-way messaging service. Its product is a portable, wireless "answering machine" or "voice mail" device called "Pocket Talk." It is an economical means for voice messaging with an acknowledgement feature by which the sender will know whether the message was received. CONXUS currently has several major markets constructed and has commenced commercial operation in South Florida and Washington, D.C. Based upon progress to date, CONXUS will complete its five year buildout requirements in 1998, one and one-half years ahead of schedule, and

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is forecasting that it will complete its 10 year buildout requirements in 1999, a full five years ahead of schedule.

2. CONXUS has actively participated in this proceeding, submitting comments and replies on the Commission's *Public Notice* (DA 97-679) (June 2, 1997), and the *Further Notice of Proposed Rule Making*.^{1/} CONXUS is also seeking reconsideration of the C Block Order.^{2/} As CONXUS has consistently maintained in this proceeding, the Commission should afford equal treatment to narrowband and broadband PCS, which are competitive services. And as CONXUS explained in its reconsideration petition, because the *C Block Order* fails to provide any meaningful relief to narrowband PCS licensees, while offering at least some relief to broadband PCS entities, it must be reconsidered. Review of the various other reconsideration petitions filed, confirms CONXUS's position.

3. Preliminarily, CONXUS must note that no party either explicitly or implicitly at any point in this proceeding has disputed CONXUS's showing that it is similarly situated to other cash strapped PCS licensees. Nor could they. As CONXUS has shown, it acquired its five regional 50/50 KHz narrowband licenses through competitive bidding.^{3/} CONXUS, therefore, currently has quarterly

^{1/} See Comments WT Docket 97-82 (June 23, 1997); Reply Comments WT Docket 97-82 (July 8, 1997); Comments on Further Notice of Proposed Rulemaking WT Docket 97-82 (November 13, 1997).

^{2/} See Petition for Reconsideration WT Docket 97-82 (November 24, 1997).

^{3/} As a minority/female owned small business ("Designated Entity") CONXUS was afforded certain financial benefits in acquiring its licenses, including installment payment
(continued...)

installment payments which it must make to the U.S. Treasury like each of the C block broadband PCS licensees.

4. Moreover, CONXUS has faced the same type of financial difficulty which other C block licensees have reported in raising capital to make its installment payments while also constructing and marketing its system in competition with larger, better financed, well established telecommunications companies. Like a number of C block broadband PCS licensees, CONXUS has had to cancel financing offerings, in CONXUS's case two such offering -- one equity offering in late 1996 and one high yield offering in mid 1996. Similar to the C block licensees, CONXUS is financing a multimillion dollar obligation to the government and implementing a system which will incur infrastructure costs of several hundred million dollars. These expenditures are comparable to that faced by a regional PCS licensee. CONXUS, therefore, competes in the financial markets for capital with broadband PCS licensees.

5. Likewise comparable is the price per MHz pop CONXUS paid for its 100 KHz of spectrum compared to the prices paid by the various C block licensees for their spectrum. Indeed, if one were to apply the same price per MHz pop that CONXUS paid to the entire C block, it would yield a figure of \$27 billion -- *more than two and one-half times the net total bid on all the C block licenses.*

^{3/}(...continued)

treatment. In addition, CONXUS holds 24 900 MHz Specialized Mobile Radio ("SMR") Major Trading Area ("MTA") licenses, also acquired through competitive bidding for which it is eligible for installment payment treatment based on its status as a small business.

Plainly in terms of total price paid for spectrum received, CONXUS bid much more than the affected licensees in the C block.

6. Furthermore, like the C block, narrowband PCS is suffering severe financial harm. Of the various entities originally obtaining licenses to operate narrowband PCS systems, most have been unable to implement their plans. Mobilemedia is bankrupt. CONXUS knows of no progress the licensee has made to build out its system. Pagenet's narrowband PCS system has failed to obtain commercial acceptance and the licensee has stopped construction. AT&T, which hardly lacks financial staying power, is nevertheless exiting the market. Benbow, a fellow Designated Entity, has made no reported progress to date in implementing its system, while Instacheck the third narrowband Designated Entity has reportedly built out only one system in Puerto Rico. Other than CONXUS, only Mtel, which enjoyed the financial benefit of a pioneer's preference for the service, is providing and actively expanding its service to the public. None of the other non-Designated Entities appear to have done anything with their licenses. Thus, as a result of the issues discussed above, the commercial implementation of narrowband PCS is certainly no further along than the C block as a whole.

7. Finally, narrowband PCS and broadband PCS are competing services. Indeed, in several respects, they offer identical service. For example, wideband PCS licensees have been touting their ability to offer both paging and voice mail service. These are the exact services offered by CONXUS's Pocket Talk service.

Factoring in such variables as battery life, portability and service cost, CONXUS competes directly with wideband PCS for market share. Because CONXUS competes directly with wideband PCS, any relief the Commission offers wideband PCS without also offering narrowband PCS will further adversely affect CONXUS's ability to obtain necessary financing.

8. With respect to the various reconsideration petitions, CONXUS strongly supports the position of Cellular Holdings, Inc., Central Oregon Cellular, Inc. and Omnipoint Corporation for applying C block relief to F block licensees. CONXUS agrees that licensees in the C and F blocks are in comparable situations, including in terms of prices bid at auction.^{4/} In fairness then, C block relief options which would be applicable to F block licensees should apply to them.

9. With respect to specific relief options, CONXUS has generally taken a neutral position in light of its competitive status with wideband PCS. However, in view that the specific relief options adopted for wideband PCS have little utility for narrowband PCS -- as CONXUS's reconsideration petition showed -- CONXUS is constrained to note that two additional options suggested by various parties would be applicable and helpful to narrowband PCS Designated Entities. First, a net present value buyout option, as advocated by virtually every petitioner, would assist narrowband

^{4/} Although generally the auction bids of F block licensees is less on a MHz pop basis, that must be balanced against the fact that these are the last licensees to market and thus are at the end of the line for the capital markets.

PCS entities in consolidating and managing their debt. Second, the option for an additional deferral period of principal and interest advocated by Nextwave, Alpine and others would allow PCS entities the opportunity to devote their resources to building out their systems, rather than debt payment.

10. One final note is appropriate. Only one petitioner actually opposes any relief for PCS Designated Entities. That petitioner is Cook Inlet Region, Inc., which although a Designated Entities itself, enjoys the combined financial backing of BellSouth (with a tangible book value of more than \$12 billion), and existing cellular operator Western Wireless. Cook Inlet argues that the Commission should refrain from offering C block licensees any relief, and indeed would further aggravate the condition of C and F block licensees by having the Commission pursuing cross default remedies against a licensee defaulting on the payment of any one C or F block license. It is difficult to discern what public interest objective Cook Inlet's position would further. Cook Inlet either wants to inflict retribution on other C block licensees it believes bid up prices, or it wants to be able to scoop up defaulted C block licenses at re-auction or in the secondary market. No matter which may be its actual motivation, however, Cook Inlet's position, if adopted, could cause massive defaults within the C and F blocks. The resulting financial turmoil would

further delay C and F block service, and disrupt the capital markets for all wireless licensees.^{5/}

11. In sum, review of the various petitions for reconsideration of the *C Block Order* supports CONXUS's position that the Commission must in fairness fashion comparable relief for narrowband entities. Petitioners have made a persuasive case for including F block as well as narrowband licensees in any relief afforded C block licensees. Moreover, the self-serving position of

^{5/} Cook Inlet suggests that requesting C block licensees have gotten what they want in terms of a one-year deferral of payments, and in light of that fact there is no need to provide any additional relief to licensees. Unfortunately, however, in CONXUS's view, the financial conditions for wireless companies have worsened since C block licensees originally requested relief, especially in terms of access to foreign capital which had been expected to open up in 1998 with the implementation of the WTO agreement. The chaos in the Asian financial markets in particular eliminates the Pacific Rim as a source of investment in startup wireless concerns in the United States. And while the deflationary impact of the plunge in the value of Asian currencies and financial markets appears mostly confirmed to those economies, there has nevertheless been substantial adverse repercussions to the U.S. domestic markets. Although CONXUS does not necessarily believe FCC policies should be keyed to world financial markets, review of market conditions is appropriate in the context of evaluating Cook Inlet's argument that no C block relief is in order.

Cook Inlet, which would maximize defaults among C and F block entities, should be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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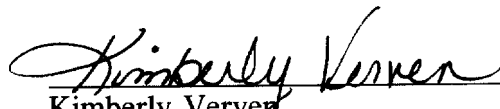
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